

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CARL FOUST,

Plaintiff,

v.

CALIFORNIA MEDICAL FACILITY,

Defendant.

No. 2:21-CV-0540-DMC-P

**ORDER**

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's first amended complaint, ECF No. 14.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "... short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it

rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity overt acts by specific defendants which support the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening required by law when the allegations are vague and conclusory.

## I. PLAINTIFF'S ALLEGATIONS

This action proceeds on Plaintiff's first amended complaint. It is not clear who Plaintiff is naming as defendants. Plaintiff alleges that:

I am under Armstrong/Clark Remedica Act peri court order I am also (A.D.A.) and DDP1. Delvelope mentally disability program mobility and C.C.C.m.s./Eop. And high risk medical I have been emotionally disturbed about what took place to me and that's whats been keeping me in and out of prison especially ata young age-I have been discriminated on because of being incarcerated and. I cant get the help that. I have been looking for help I "5" years in the boy scouts in the element school kingaten over "57" years to me. Dear mr. Falconer, I recived 2 court on 8/15/2021 orders for dead line extensions, I for 30 days, (pc) Foust v. California Medical Facility. 2:21-cv-0540-DMC-P under the other for 14 days. I am sending you goth copies of what took place yesterday. I received a puloity ducat yesterday. Sanchez refuse to help me, knowing I am an A.D.A DDP. I am suffering from head trama from two CDCR bus wrecks. Co A. Cribbs tried to help me Sanchez told CO not to help me and told him. I need ta get some one else to help me mr. Foust, and The Tami Falconer Ombudsman, Office of the Ombudsman 1515 S Street. Sacramento, CA 95811, T: 916.324-5448 to call for me I can help mr. Foust, Carl . . . .

ECF No. 14, pg. 1 (errors in original).

Plaintiff's other "claims" are similarly incomprehensible. See id. at 9-11.

## II. DISCUSSION

Plaintiff's complaint is defective. Perhaps most notably, Plaintiff has not named any individuals alleged to be responsible for a violation of Plaintiff's constitutional or statutory rights. To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual connection or link between the actions of the named defendants and the alleged deprivations. See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he

1 does an affirmative act, participates in another's affirmative acts, or omits to perform an act which  
 2 he is legally required to do that causes the deprivation of which complaint is made.” Johnson v.  
 3 Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations concerning the  
 4 involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of  
 5 Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth specific facts as to  
 6 each individual defendant’s causal role in the alleged constitutional deprivation. See Leer v.  
 7 Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

8           Currently, the only defendant named in this action is the California Medical  
 9 Facility. See ECF No. 1 (original complaint). The Eleventh Amendment prohibits federal courts  
 10 from hearing suits brought against a state both by its own citizens, as well as by citizens of other  
 11 states. See Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991).  
 12 This prohibition extends to suits against states themselves, and to suits against state agencies. See  
 13 Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d  
 14 1040, 1045 (9th Cir. 1989). A state’s agency responsible for incarceration and correction of  
 15 prisoners is a state agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438  
 16 U.S. 781, 782 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en  
 17 banc). Here, the only currently named defendant – the California Medical Facility – is immune.

18           Plaintiff will be provided an additional opportunity to file an amended complaint  
 19 which articulates cognizable constitutional claims against named individuals.

### 20 21 **III. CONCLUSION**

22           Because it is possible that the deficiencies identified in this order may be cured by  
 23 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire  
 24 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
 25 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
 26 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
 27 amend, all claims alleged in the original complaint which are not alleged in the amended  
 28 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if

1 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make  
2 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be  
3 complete in itself without reference to any prior pleading. See id.

4 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the  
5 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See  
6 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
7 each named defendant is involved and must set forth some affirmative link or connection between  
8 each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167  
9 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

10 Finally, Plaintiff is warned that failure to file a second amended complaint within  
11 the time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d  
12 at 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to  
13 comply with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule  
14 41(b). See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's first amended complaint is dismissed with leave to amend; and
- 17 2. Plaintiff shall file a second amended complaint within 30 days of the date  
18 of service of this order.

19  
20 Dated: November 2, 2021

21   
22 DENNIS M. COTA  
23 UNITED STATES MAGISTRATE JUDGE  
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